

Memorandum 2017-49

California Public Records Act Clean-Up: Part 1. General Provisions

At the August meeting, the Commission¹ considered and made various decisions regarding a draft of a tentative outline for nonsubstantive recodification of the California Public Records Act (“CPRA,” currently codified as Government Code Sections 6250-6276.48).² The staff has since prepared a new version of the tentative outline, which is attached to and discussed in Memorandum 2017-48.

The tentative outline would place the substance of the CPRA in new Division 10 of Title 1 of the Government Code, and would subdivide that division into several different parts, most of which would be further subdivided into chapters and articles. In accordance with the outline, attached for Commissioners and other interested persons to review is a draft of “Part 1. General Provisions.”

In preparing this draft, the staff included the substantive material for Part 1 that is listed in the tentative outline. The staff was also mindful of the following guidance from the Commission:

- This study is strictly nonsubstantive; the proposed recodification should consist of clarifying clean-up only. In preparing drafts for the Commission to consider, the staff should stick closely to the existing language of the CPRA. The staff should also use the Commission’s other traditional techniques for ensuring that a recodification effects no substantive change.
- In addition, the staff should apply the same prudential considerations as in other recent studies of this type. Any proposed statutory change must meet all three of the following criteria:
 - (1) It is plainly beneficial.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2017-24; *Draft Minutes* (Aug. 2017), pp. 5-7.

- (2) It does not present a significant risk of unintended consequences (i.e., its effects seem straightforward and circumscribed).
- (3) It is not likely to be controversial.³

Staff Notes (☞ **Staff Note**) in the attached draft flag various drafting issues and other matters for consideration. The staff does not plan to raise all of these points for discussion at the Commission's upcoming meeting. We examine a few of the issues below and will raise those issues for discussion at the meeting.

If anyone would like to raise another issue for discussion, please plan to do so at the meeting, or submit written comments at or before the meeting.⁴ The Commission is interested in hearing any suggestion on the attached draft, regardless of whether the point is mentioned in a Staff Note.

Comments from knowledgeable persons are invaluable in the Commission's study process.⁵ The Commission welcomes public participation in its meetings and typically allows everyone an opportunity to speak (subject to time constraints as needed).

Unless otherwise indicated, all further statutory references in this memorandum are to the Government Code.

NUMBERING SYSTEM FOR THE PROPOSED RECODIFICATION

Consistent with the tentative outline,⁶ the staff used a 3-decimal-place system to number the code sections in the attached draft, beginning with Section 7920.000. The Commission has used that type of approach in many previous law reform projects, such as the Civil Discovery Act⁷ and the Enforcement of Judgments Law.⁸

The selected approach is well-suited for recodifying material within a crowded part of a code, where few unused whole numbers are available. Title 1 of the Government Code (where the CPRA is currently located and where it would be recodified) is a prime example. Using a 3-decimal-place system would

3. Minutes (Feb. 2017), p. 3.

4. Written comments may be emailed to scohen@clrc.ca.gov or bgaal@clrc.ca.gov.

5. For a brief description of the Commission's study process, see http://www.clrc.ca.gov/Menu5_about/process.html.

6. See Memorandum 2017-48, Attachment p. 1; see also Memorandum 2017-24, Attachment p. 1.

7. See *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm'n Reports 789 (2003); Code Civ. Proc. §§ 2016.010-2036.050.

8. See *The Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 25 (1982); Code Civ. Proc. §§ 680.010-724.260.

allow insertion of as many code sections as the Commission deems optimal. It would also be possible to leave room for the CPRA to evolve and for inclusion of unrelated new material within Title 1.

In contrast, using whole numbers could force the Commission to keep some overlong code sections intact, rather than breaking them up in a user-friendly manner. Such an approach could also lead to future confusion if it becomes necessary to insert new material and there are not enough whole numbers available. The result can be an ad hoc mish-mash of decimals that are difficult to sequence (34.1, 34.5, 34.10, etc.). The existing version of the CPRA is an excellent example of this type of problem.

Would the Commission like to proceed with the 3-decimal-place numbering system used in the attached draft?

COMMENT TO PROPOSED SECTION 7920.000

In the attached draft, proposed Section 7920.000 and the accompanying Comment would provide:

§ 7920.000. California Public Records Act

7920.000. This division shall be known and may be cited as the California Public Records Act.

Comment. Section 7920.000 continues former Section 6251 without substantive change. The California Public Records Act or “CPRA” was formerly codified as Chapter 3.5 (commencing with Section 6250) of Division 7 of this title.

For a similar law pertaining to federal agencies, see 5 U.S.C. § 552 (“Freedom of Information Act” or “FOIA”).

For a key constitutional provision on “access to information concerning the conduct of the people’s business,” see Cal. Const. art. I, § 3(b).

For guidance on access to legislative records, see Gov’t Code §§ 9070-9080 (“Legislative Open Records Act”). For discussion of provisions and doctrines governing access to judicial records, see, e.g., NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 980 P.2d 330, 86 Cal. Rptr. 2d 778 (1999). For a law on access to the records of certain quasi-public entities, see Educ. Code §§ 72690-72701, 89913-89919, 92950-92961 (Richard McKee Transparency Act).

For guidance on record retention, see, e.g., Gov’t Code §§ 9080 (legislative records), 12220-12237 (State Archives), 14740-14746 (State Records Storage Act), 26201-26202.6 (county records), 34090-34090.8 (city records), 68150-68152 (trial court records). See also Gov’t Code §§ 12270-12279 (State Records Management Act).

Many other statutes and sources of law govern public records. For instance, the following statutes are located in Division 7 of this title, where the CPRA was formerly codified: Gov't Code §§ 6200-6203 (crimes relating to public records, documents and certificates), 6204-6204.4 (public records protection and recovery), 6205-6210 (address confidentiality for victims of domestic violence, sexual assault, and stalking), 6215-6216 (address confidentiality for reproductive health care service providers, employees, volunteers, and patients), 6219 (governmental linguistics).

The Comment to proposed Section 7920.000 is intended to be user-friendly. Among other things, it would implement the Commission's decisions to:

- (1) Refer to the public records statutes currently located near the CPRA "where appropriate in the Commission's Comments to code sections in the recodified CPRA,"
- (2) Refer to Article I, Section 3(b) of the California Constitution "at appropriate places in its Comments to the proposed legislation, but not in the proposed legislation itself," and
- (3) Refer to the provisions governing retention of public records "at appropriate places in its Comments to the proposed legislation."⁹

Commissioners and other interested persons should consider whether any revisions of this proposed Comment would significantly improve its usefulness, while keeping the Comment reasonably concise. **Should any revisions be made?**

DEFINITIONS THAT APPLY ONLY TO A SPECIFIC CODE SECTION OR A PART THEREOF

Some of the definitions in the CPRA apply to the entire CPRA (e.g., the definition of "public records"¹⁰). The tentative outline would place all of these definitions in alphabetical order in "Chapter 2. Definitions" of Part 1 of new Division 10.¹¹

Other definitions in the CPRA apply only to a particular code section, subdivision, or paragraph. For example, Section 6253 establishes a 10-day time limit for responding to a request for a copy of a public record, but permits an extension of that time limit in "unusual circumstances." The section includes a definition of "unusual circumstances," which applies only "[a]s used in this section."

9. Draft Minutes (Aug. 2017), pp. 5-6.

10. See Section 6252(e).

11. See Memorandum 2017-48.

Determining where to place such a definition (a “limited application definition”) in the CPRA recodification is not clear-cut. One possibility would be to place it in “Chapter 2. Definitions,” along with the other CPRA definitions. Another possibility would be to leave it in close proximity to the substantive material to which it applies.

Both options have advantages and disadvantages. These may vary in strength depending on the nature of the definition and the substantive material to which it applies.

The tentative outline does not precisely indicate where to place each of the limited application definitions. Rather, it leaves both options open.¹²

Determining precisely where to place such a definition *should become easier* once the staff drafts the part of the CPRA recodification that will contain the substantive material that currently surrounds that definition. Thus, the current draft of “Chapter 2. Definitions” *does not* contain any of the limited application definitions.¹³

As drafting of the remainder of the CPRA recodification proceeds, the staff will flag every limited application definition in the statutory material being recodified and discuss where to locate those definitions. The Commission will then be well-situated to decide on an appropriate location for each such definition. The staff will make adjustments in “Chapter 2. Definitions” as necessary to implement those decisions.

Is that approach acceptable to the Commission?

APPARENT ERRORS IN EXISTING LAW

In preparing the attached draft, the staff ran across two existing statutory cross-references that appear to be erroneous. We also found another apparent error in existing law. Each of those matters is discussed below.

12. For example, the outline puts the definition of “unusual circumstances” on a list of provisions to “consider including” in “Chapter 2. Definitions.” The outline also places that definition, plus the surrounding substantive material, in “Part 3. Inspection Procedures,” but indicates that the definition may “possibly” be placed elsewhere. See Memorandum 2017-48.

13. Although the attached draft does not include any of the limited application definitions, it does include a “signpost provision” for one of those definitions (Section 6254.18’s special definition of “public agency”) because there is also a CPRA-wide definition of the same term. See proposed Section 7920.520(b) & accompanying Staff Note #1.

Cross-Reference in Section 6252(a)

Section 6252(a) now provides:

6252. As used in this chapter:

(a) “Local agency” includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

In the attached draft, the substance of this provision would be continued in proposed Section 7920.505:

7920.505. As used in this division, “local agency” includes any of the following:

- (a) A county.
- (b) A city, whether general law or chartered.
- (c) A city and county.
- (d) A school district.
- (e) A municipal corporation.
- (f) A district.
- (g) A political subdivision.
- (h) Any board, commission, or agency of the foregoing.
- (i) Another local public agency.
- (j) An entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952.

Comment. Section 7920.505 continues former Section 6252(a) without substantive change.

In subdivision (j), the erroneous reference to “subdivisions (c) and (d) of Section 54952 that appeared in former Section 6252(a) has been replaced with a reference to “subdivision (c) or (d) of Section 54952.” (Emphasis added.) This is a technical correction.

See Section 7920.520 (“public agency”).

In drafting proposed Section 7920.505, the staff made stylistic revisions to enhance readability and conform to modern drafting conventions.

The Commission’s longstanding preference is to draft a statute using the singular form rather than the plural. That approach tends to improve precision and make the statute more readily understandable. It would not affect the substantive meaning of the provision.¹⁴

Existing Section 6252(a) already uses the singular form, except in the last clause (“entities that are legislative bodies of a local agency pursuant to

14. See Section 13 (“The singular number includes the plural, and the plural the singular.”).

subdivisions (c) and (d) of Section 54952"). In converting that phrase to the singular form, the staff was initially unsure how to handle the cross-reference to "subdivisions (c) and (d) of Section 54952."

In particular, we wondered which of the following versions to use:

(j) An entity that is a legislative body of a local agency pursuant to subdivisions (c) *and* (d) of Section 54952.

or

(j) An entity that is a legislative body of a local agency pursuant to subdivision (c) *or* (d) of Section 54952.

On closer examination, however, we concluded that Section 6252(a)'s cross-reference to "subdivisions (c) *and* (d) of Section 54952" should be replaced by a reference to "subdivision (c) *or* (d) of Section 54952."

Those subdivisions provide:

54952. As used in this chapter, "legislative body" means:

....

(c)(1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

It seems improbable that the Legislature intended to require an entity to satisfy the requirements of *both* subdivisions to qualify as a “local agency” under Section 6252(a) for purposes of the CPRA.

We feel sufficiently confident of this conclusion that we made the correction in drafting proposed Section 7920.505(j), which would continue the substance of Section 6252(a). We recommend, however, that the Commission also include a Note in its tentative recommendation for this study, which would solicit comments on the proper treatment of the cross-reference to “subdivisions (c) and (d) of Section 54952.” For convenient consideration, the Note could be located immediately below proposed Section 7920.505.

Is proposed Section 7920.505 satisfactory for purposes of a tentative recommendation? If so, would the Commission like to include a Note as described above?

(If the Commission eventually approves a final report that corrects the cross-reference to “subdivisions (c) and (d) of Section 54952,” it might be advisable to:

- (1) Include a list of “Corrected Cross-References”¹⁵ in that report; and
- (2) Include this cross-reference and any other corrected cross-references on that list.

Commissioners and other interested persons should bear that possibility in mind as this study proceeds.)

Cross-Reference in Section 6254.24(b)

Existing Section 6254.24(b) provides:

6254.24. As used in this chapter, “public safety official” means the following parties, whether active or retired:

....

(b) A public officer or other person listed in Sections 1808.2 *and* 1808.6 of the Vehicle Code.¹⁶

The cross-referenced Vehicle Code sections provide:

1808.2. In addition to those specified in Section 1808.4, the home address of any inspector or investigator regularly employed and paid as such in the office of a district attorney or any peace officer employee of the Board of Prison Terms appearing in any record of the department is confidential.

15. For an example of such a list, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217, 257-64 (2009).

16. Emphasis added.

1808.6. (a) In addition to those specified in Section 1808.4, the home address of any of the following persons, that appears in any record of the department, is confidential, if the person requests the confidentiality of that information:

(1) The chairperson, executive officer, commissioners, and deputy commissioners of the Board of Prison Terms.

(2) The chairperson, members, executive director, and hearing representatives of the Youthful Offender Parole Board.

(3) The spouse or children of persons listed in this section, regardless of the spouse's or child's place of residence.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment, except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The department shall inform any person who requests a confidential home address of the name of the agency that employs the individual whose address was requested.

Given the content of these provisions, the staff strongly suspects that Section 6254.24(b)'s cross-reference to "Sections 1808.2 *and* 1808.6 of the Vehicle Code" should be replaced by a reference to "Section 1808.2 *or* 1808.6 of the Vehicle Code." It seems improbable that the Legislature intended to require a person to be listed in *both* of the Vehicle Code provisions to qualify as a "public safety official" within the meaning of Section 6254.24.

We feel sufficiently confident of this conclusion that we made the correction in drafting proposed Section 7920.530(b), which would continue the substance of Section 6254.24(b). We recommend, however, that the Commission also include a Note in its tentative recommendation for this study, which would solicit comments on the proper treatment of the cross-reference to "Sections 1808.2 and 1808.6 of the Vehicle Code." For convenient consideration, the Note could be located immediately below proposed Section 7920.530.

Is this approach acceptable to the Commission?

Apparent Error in Section 6254.24(g)

Section 6254.24(g) now provides:

6254.24. As used in this chapter, “public safety official” means the following parties, whether active or retired:

....
(g) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff’s office, the Department of the California Highway Patrol, federal, state, or a local detention facility, *and* a local juvenile hall, camp, ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.¹⁷

Read literally, this provision would seem to encompass only “a probation officer as defined in Section 830.5 of the Penal Code” and an employee who supervises inmates in *both* (1) “a county sheriff’s office, the Department of the California Highway Patrol, federal, state, or a local detention facility” *and* in (2) “a local juvenile hall, camp, ranch, or home.” It seems improbable, however, that the Legislature really intended to limit the provision to an employee who supervises inmates in one of the enumerated facilities for adults *and* in one of the enumerated facilities for juveniles.

Instead, the staff strongly suspects that the Legislature intended to include any employee who supervises inmates in *either* (1) “a county sheriff’s office, the Department of the California Highway Patrol, federal, state, or a local detention facility” *or* in (2) “a local juvenile hall, camp, ranch, or home.” We feel sufficiently confident of this conclusion that we made the correction in drafting proposed Section 7920.530(g) and the corresponding Comment.

We recommend, however, that the Commission also include a Note in its tentative recommendation for this study, which would solicit comments on the proper way to recodify Section 6254.24(g). For convenient consideration, the Note could be located immediately below proposed Section 7920.530.

Is this approach acceptable to the Commission?

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

17. Emphasis added.

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DRAFT LEGISLATION

1 **☞ Staff Note.** This is a work in progress. The material shown below may be changed. For a
2 tentative outline of new Division 10 of Title 1 of the Government Code, see Memorandum 2017-
3 48.

4 A draft of an official Commission “Comment” follows each proposed code section in the
5 proposed recodification. Such Comments will be included in any final recommendation. The
6 Comments indicate the source of each recodified code section (or provision within the code
7 section) and describe how the recodified code section (or provision) compares with prior law.
8 Courts have routinely held that the Commission’s Comments are evidence of legislative intent
9 with regard to any legislation that implements a Commission recommendation.

10 There is a “disposition table” at the end of the proposed recodification. It summarizes, in
11 tabular form, the disposition of every provision of the existing code that has been included in this
12 proposed recodification.

13 There is also a “derivation table” at the end of the proposed recodification. It summarizes, in
14 tabular form, the statutory derivation of every new code provision in this proposed recodification.

15 Some provisions in this draft are followed by a “Staff Note.” Staff Notes are intended to be
16 temporary and will not be part of the Commission’s final recommendation. They serve to flag
17 issues requiring special attention or treatment. The staff does not plan to discuss each of these
18 matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of
19 concern, and then raise those issues for discussion at the meeting or express their concerns in
20 writing before the meeting, or both.

21 Some provisions in this draft contain a bracketed reference to one or more existing code
22 sections. As new Division 10 is drafted, these references will be conformed to the new numbering
23 scheme.

24 In some places, it is necessary to refer to a section that has not yet been drafted. That is done by
25 referring to “Section 7920.xxx.” The Commission will fill in these references as it drafts the
26 proposed recodification.

27 All of the proposed provisions would be located in the Government Code. All references are to
28 the Government Code unless otherwise indicated.

29 The Commission welcomes public comment on any issue relating to the content of this draft or
30 any other aspect of its ongoing CPRA Clean-Up study. Comments should be directed to Steve
31 Cohen (scohen@clrc.ca.gov) or Barbara Gaal (bgaal@clrc.ca.gov).

32 **Gov’t Code §§ 7920.000-7920.xxx (added). California Public Records Act**

33 SEC. ____ . Division 10 (commencing with Section 7920.000) is added to the
34 Government Code, to read:

1 DIVISION 10. INSPECTION OF PUBLIC RECORDS

2 PART 1. GENERAL PROVISIONS

3 CHAPTER 1. PRELIMINARY PROVISIONS

4 Article 1. Short Title

5 **§ 7920.000. California Public Records Act**

6 7920.000. This division shall be known and may be cited as the California
7 Public Records Act.

8 **Comment.** Section 7920.000 continues former Section 6251 without substantive change. The
9 California Public Records Act or “CPRA” was formerly codified as Chapter 3.5 (commencing
10 with Section 6250) of Division 7 of this title.

11 For a similar law pertaining to federal agencies, see 5 U.S.C. § 552 (“Freedom of Information
12 Act” or “FOIA”).

13 For a key constitutional provision on “access to information concerning the conduct of the
14 people’s business,” see Cal. Const. art. I, § 3(b).

15 For guidance on access to legislative records, see Gov’t Code §§ 9070-9080 (“Legislative
16 Open Records Act”). For discussion of provisions and doctrines governing access to judicial
17 records, see, e.g., NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 980
18 P.2d 330, 86 Cal. Rptr. 2d 778 (1999). For a law on access to the records of certain quasi-public
19 entities, see Educ. Code §§ 72690-72701, 89913-89919, 92950-92961 (Richard McKee
20 Transparency Act).

21 For guidance on record retention, see, e.g., Gov’t Code §§ 9080 (legislative records), 12220-
22 12237 (State Archives), 14740-14746 (State Records Storage Act), 26201-26202.6 (county
23 records), 34090-34090.8 (city records), 68150-68152 (trial court records). See also Gov’t Code
24 §§ 12270-12279 (State Records Management Act).

25 Many other statutes and sources of law govern public records. For instance, the following
26 statutes are located in Division 7 of this title, where the CPRA was formerly codified: Gov’t Code
27 §§ 6200-6203 (crimes relating to public records, documents and certificates), 6204-6204.4 (public
28 records protection and recovery), 6205-6210 (address confidentiality for victims of domestic
29 violence, sexual assault, and stalking), 6215-6216 (address confidentiality for reproductive health
30 care service providers, employees, volunteers, and patients), 6219 (governmental linguistics).

31 ☞ **Staff Note.** The Comment to proposed Section 7920.000 is intended to be user-friendly. For
32 further discussion of it, see the accompanying memorandum.

33 **§ 7920.005. CPRA Recodification Act of 2019**

34 7920.005. This division recodifies the provisions of former Chapter 3.5
35 (commencing with Section 6250) of Division 7 of this title. The act that added this
36 division shall be known and may be cited as the “CPRA Recodification Act of
37 2019.”

38 **Comment.** Section 7920.005 provides a convenient means of referring to the recodification of
39 former Sections 6250-6276.48. For background, see *California Public Records Act Clean-Up*, __
40 Cal. L. Revision Comm’n Reports __ (2018).

41 ☞ **Staff Note.** In drafting proposed Section 7920.005, the staff assumed that the Commission
42 will approve a final recommendation in this study in 2018 and seek introduction of implementing

1 legislation in 2019. The dates in Section 7920.005 and the accompanying Comment will require
2 adjustment if those assumptions prove incorrect.

3 Article 2. Effect of Recodification

4 § 7920.100. Nonsubstantive reform

5 7920.100. Nothing in the CPRA Recodification Act of 2019 is intended to
6 substantively change the law relating to inspection of public records. The act is
7 intended to be entirely nonsubstantive in effect. Every provision of this division
8 and every other provision of this act, including, without limitation, every cross-
9 reference in every provision of the act, shall be interpreted consistent with the
10 nonsubstantive intent of the act.

11 **Comment.** Section 7920.100 is modeled on Penal Code Section 16005. It makes clear that the
12 CPRA Recodification Act of 2019 has no substantive impact. The act is intended solely to make
13 the California Public Records Act more user-friendly. For background, see *California Public*
14 *Records Act Clean-Up*, __ Cal. L. Revision Comm'n Reports __ (2018).

15 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
16 provision in this division, see Section 7920.110. For specific guidance on the impact of an
17 Attorney General opinion interpreting a predecessor of a provision in this division, see Section
18 7920.115. For specific guidance on the impact of a judicial decision or Attorney General opinion
19 assessing the constitutionality of a predecessor of a provision in this division, see Section
20 7920.120.

21 See Sections 7920.005 (“CPRA Recodification Act of 2019”), 7920.525 (“public records”).

22 **Staff Note.** Together with proposed Sections 7920.110 and 7920.120, proposed Section
23 7920.100 would implement the Commission’s decision that “the proposed CPRA recodification
24 should include provisions modeled on Penal Code Sections 16005, 16020, and 16025” Draft
25 Minutes (Aug. 2017), p. 6.

26 § 7920.105. Continuation of existing law

27 7920.105. (a) A provision of this division, or any other provision of the CPRA
28 Recodification Act of 2019, insofar as it is substantially the same as a previously
29 existing provision relating to the same subject matter, shall be considered as a
30 restatement and continuation thereof and not as a new enactment.

31 (b) A reference in a statute to a previously existing provision that is restated and
32 continued in this division, or in any other provision of the CPRA Recodification
33 Act of 2019, shall, unless a contrary intent appears, be deemed a reference to the
34 restatement and continuation.

35 (c) A reference in a statute to a provision of this division, or any other provision
36 of the CPRA Recodification Act of 2019, which is substantially the same as a
37 previously existing provision, shall, unless a contrary intent appears, be deemed to
38 include a reference to the previously existing provision.

39 **Comment.** Subdivision (a) of Section 7920.105 is similar to Section 2, which is a standard
40 provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2;
41 Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

42 Subdivision (b) is drawn from Section 9604 and Penal Code Section 16010(b).

43 Subdivision (c) is drawn from Family Code Section 2 and Penal Code Section 16010(c).

1 See Section 7920.005 (“CPRA Recodification Act of 2019”).

2 **☞ Staff Note.** Earlier this year, the Commission concluded: “To ease the transition to a new
3 numbering scheme, the proposed law should include a provision substantially similar to Penal
4 Code Section 16010” Minutes (Feb. 2017), pp. 3-4. Proposed Section 7920.105 would
5 implement that decision.

6 **§ 7920.110. Judicial decision interpreting former law**

7 7920.110. (a) A judicial decision interpreting a previously existing provision is
8 relevant in interpreting any provision of this division, or any other provision of the
9 CPRA Recodification Act of 2019, which restates and continues that previously
10 existing provision.

11 (b) However, in enacting the CPRA Recodification Act of 2019, the Legislature
12 has not evaluated the correctness of any judicial decision interpreting a provision
13 affected by the act.

14 (c) The CPRA Recodification Act of 2019 is not intended to, and does not,
15 reflect any assessment of any judicial decision interpreting any provision affected
16 by the act.

17 **Comment.** Section 7920.110 is modeled on Penal Code Section 16020.

18 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
19 construing its successor in the CPRA Recodification Act of 2019.

20 Subdivisions (b) and (c) make clear that in recodifying former Sections 6250-6276.48, the
21 Legislature has not taken any position on any case interpreting any of those provisions.

22 For specific guidance on the impact of an Attorney General opinion interpreting a predecessor
23 of a provision in this division, see Section 7920.115. For specific guidance on the impact of a
24 judicial decision or Attorney General opinion assessing the constitutionality of a predecessor of a
25 provision in this division, see Section 7920.120. For general guidance on the nonsubstantive
26 impact of the CPRA Recodification Act of 2019, see Section 7920.100.

27 See Section 7920.005 (“CPRA Recodification Act of 2019”).

28 **☞ Staff Note.** Together with proposed Sections 7920.100 and 7920.120, proposed Section
29 7920.110 would implement the Commission’s decision that “the proposed CPRA recodification
30 should include provisions modeled on Penal Code Sections 16005, 16020, and 16025” Draft
31 Minutes (Aug. 2017), p. 6.

32 **§ 7920.115. Attorney General opinion interpreting former law**

33 7920.115. (a) An opinion of the Attorney General interpreting a previously
34 existing provision is relevant in interpreting any provision of this division, or any
35 other provision of the CPRA Recodification Act of 2019, which restates and
36 continues that previously existing provision.

37 (b) However, in enacting the CPRA Recodification Act of 2019, the Legislature
38 has not evaluated the correctness of any Attorney General opinion interpreting a
39 provision affected by the act.

40 (c) The CPRA Recodification Act of 2019 is not intended to, and does not,
41 reflect any assessment of any Attorney General opinion interpreting any provision
42 affected by the act.

43 **Comment.** Section 7920.115 is comparable to Section 7920.110, but it pertains to Attorney
44 General opinions rather than judicial decisions.

1 Subdivision (a) makes clear that Attorney General opinions construing a predecessor provision
2 are relevant in construing its successor in the CPRA Recodification Act of 2019.

3 Subdivisions (b) and (c) make clear that in recodifying former Sections 6250-6276.48, the
4 Legislature has not taken any position on any Attorney General opinion interpreting any of those
5 provisions.

6 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
7 provision in this division, see Section 7920.110. For specific guidance on the impact of a judicial
8 decision or Attorney General opinion assessing the constitutionality of a predecessor of a
9 provision in this division, see Section 7920.120. For general guidance on the nonsubstantive
10 impact of the CPRA Recodification Act of 2019, see Section 7920.100.

11 See Section 7920.005 (“CPRA Recodification Act of 2019”).

12 **☞ Staff Note.** Together with proposed Section 7920.120, proposed Section 7920.115 would
13 implement the Commission’s decision that “the recodification should include statutory language
14 that specifically refers to Attorney General opinions interpreting the CPRA or determining its
15 constitutionality.” Draft Minutes (Aug. 2017), p. 6.

16 **§ 7920.120. Constitutionality**

17 7920.120. (a) A judicial decision or Attorney General opinion on the
18 constitutionality of a previously existing provision is relevant in determining the
19 constitutionality of any provision of this division, or any other provision of the
20 CPRA Recodification Act of 2019, which restates and continues that previously
21 existing provision.

22 (b) However, in enacting the CPRA Recodification Act of 2019, the Legislature
23 has not evaluated the constitutionality of any provision affected by the act, or the
24 correctness of any judicial decision or Attorney General opinion on the
25 constitutionality of any provision affected by the act.

26 (c) The CPRA Recodification Act of 2019 is not intended to, and does not,
27 reflect any determination of the constitutionality of any provision affected by the
28 act.

29 **Comment.** Section 7920.120 is modeled on Penal Code Section 16025. Due to the prevalence
30 and significant impact of Attorney General opinions on CPRA issues, the section expressly refers
31 to Attorney General opinions as well as judicial decisions.

32 Subdivision (a) makes clear that case law and Attorney General opinions on the
33 constitutionality of a predecessor provision are relevant in determining the constitutionality of its
34 successor in the CPRA Recodification Act of 2019.

35 Subdivisions (b) and (c) make clear that in recodifying former Sections 6250-6276.48, the
36 Legislature has not taken any position on the constitutionality of any of those provisions.

37 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
38 provision in this division, see Section 7920.110. For specific guidance on the impact of an
39 Attorney General opinion interpreting a predecessor of a provision in this division, see Section
40 7920.115. For general guidance on the nonsubstantive impact of the CPRA Recodification Act of
41 2019, see Section 7920.100.

42 See Section 7920.005 (“CPRA Recodification Act of 2019”).

43 **☞ Staff Note.** Together with proposed Sections 7920.100 and 7920.110, proposed Section
44 7920.120 would implement the Commission’s decision that “the proposed CPRA recodification
45 should include provisions modeled on Penal Code Sections 16005, 16020, and 16025” Draft
46 Minutes (Aug. 2017), p. 6.

47 Together with proposed Section 7920.115, proposed Section 7920.120 would also implement
48 the Commission’s decision that “the recodification should include statutory language that

1 specifically refers to Attorney General opinions interpreting the CPRA or determining its
2 constitutionality.” Draft Minutes (Aug. 2017), p. 6.

3 Article 3. Effect of Division

4 **§ 7920.200. Effect of division**

5 7920.200. The provisions of this division shall not be deemed in any manner to
6 affect the status of judicial records as it existed immediately prior to the effective
7 date of the provision that is continued in this section, nor to affect the rights of
8 litigants, including parties to administrative proceedings, under the laws of
9 discovery of this state, nor to limit or impair any rights of discovery in a criminal
10 case.

11 **Comment.** Section 7920.200 continues former Section 6260 without substantive change.

12 Former Section 6260 was enacted in 1968 (see 1968 Cal. Stat. ch. 1473, § 39) and amended in
13 1976 to insert the phrase “nor to limit or impair any rights of discovery in a criminal case” (see
14 1976 Cal. Stat. ch. 314, § 2). The effective date of the original enactment was January 1, 1969.
15 See Cal. Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a).

16 CHAPTER 2. DEFINITIONS

17 **§ 7920.500. “Former Section 6254 provisions”**

18 7920.500. (a) The following provisions are continuations of provisions that were
19 included in former Section 6254 as that section read when it was repealed by the
20 CPRA Recodification Act of 2019:

- 21 (1) [Section 6254(a)]
- 22 (2) [Section 6254(b)]
- 23 (3) [Section 6254(c)]
- 24 (4) [Section 6254(d)]
- 25 (5) [Section 6254(e)]
- 26 (6) [Section 6254(f)]
- 27 (7) [Section 6254(g)]
- 28 (8) [Section 6254(h)]
- 29 (9) [Section 6254(i)]
- 30 (10) [Section 6254(j)]
- 31 (11) [Section 6254(k)]
- 32 (12) [Section 6254(l)]
- 33 (13) [Section 6254(m)]
- 34 (14) [Section 6254(n)]
- 35 (15) [Section 6254(o)]
- 36 (16) [Section 6254(p)]
- 37 (17) [Section 6254(q)]
- 38 (18) [Section 6254(r)]
- 39 (19) [Section 6254(s)]

- 1 (20) [Section 6254(t)]
- 2 (21) [Section 6254(u)(1)]
- 3 (22) [Section 6254(u)(2)]
- 4 (23) [Section 6254(u)(3)]
- 5 (24) [Section 6254(v)]
- 6 (25) [Section 6254(w)]
- 7 (26) [Section 6254(x)]
- 8 (27) [Section 6254(y)]
- 9 (28) [Section 6254(z)]
- 10 (29) [Section 6254(aa)]
- 11 (30) [Section 6254(ab)]
- 12 (31) [Section 6254(ac)]
- 13 (32) [Section 6254(ad)]
- 14 (33) [Section 6254 2d-to-last ¶]
- 15 (34) [Section 6254 last ¶]

16 (b) The provisions listed in subdivision (a) may be referred to as “former
17 Section 6254 provisions.”

18 **Comment.** Section 7920.500 is new. It provides a convenient means of referring to the
19 provisions that comprised former Section 6254.

20 For a disposition table showing where each provision in former Section 6254 was recodified,
21 as well as a derivation table showing the source of each provision in the CPRA Recodification of
22 2019, see *California Public Records Act Clean-Up*, __ Cal. L. Revision Comm’n Reports __
23 (2018).

24 See Section 7920.005 (“CPRA Recodification Act of 2019”).

25 **Staff Notes.**

26 (1) Proposed Section 7920.500 is modeled on several provisions in the Deadly Weapons
27 Recodification Act of 2010. See Penal Code §§ 16575 (“Former Article 4 of Chapter 1
28 provisions”), 16580 (“Former Chapter 1 provisions”), 16585 (“Former Section 12078
29 provisions”). It is included for drafting convenience.

30 (2) The list of bracketed provisions is based on the Commission’s tentative outline, which
31 shows how the Commission plans to divide up the substance of existing Section 6254 (an overly
32 long provision that calls for reorganization). For purposes of preparing this list, the staff has
33 assumed that the various definitions scattered throughout Section 6254 will remain in proximity
34 to the associated substantive material, instead of being placed in “Chapter 2. Definitions.” We
35 will make adjustments as necessary if that assumption later proves incorrect.

36 The staff has not yet drafted provisions that would continue the substance of the existing
37 provisions shown in brackets. After we do so, we will replace the bracketed numbers with the
38 corresponding new numbers.

39 (3) The provisions on which proposed Section 7920.500 is modeled refer in several places to a
40 range of code sections. For example, Penal Code Section 16585 (“former Section 12078
41 provisions”) refers to “Sections 27400 to 27415, inclusive.”

42 There is possibility that in the future the Legislature will place a completely new provision in
43 that range of code sections. For example, the Legislature might add a Penal Code Section
44 27400.5, which does not derive from former Penal Code Section 12078.

45 To ensure that courts do not construe the defined term “former Section 12078 provisions” to
46 include such new provisions, Penal Code Section 16585 is subject to an exception. See Penal
47 Code Section 16585(a), (c). Similar language appears in the other Penal Code sections that served

1 as models in drafting proposed Section 7920.500. See Penal Code Sections 16575(a), (c) &
2 16580(a), (c).

3 If proposed Section 7920.500 ultimately refers to a range of code sections, it should be made
4 subject to a similar exception. It is not yet clear whether this will be necessary.

5 **§ 7920.505. “Local agency”**

6 7920.505. As used in this division, “local agency” includes any of the following:

7 (a) A county.

8 (b) A city, whether general law or chartered.

9 (c) A city and county.

10 (d) A school district.

11 (e) A municipal corporation.

12 (f) A district.

13 (g) A political subdivision.

14 (h) Any board, commission, or agency of the foregoing.

15 (i) Another local public agency.

16 (j) An entity that is a legislative body of a local agency pursuant to subdivision
17 (c) or (d) of Section 54952.

18 **Comment.** Section 7920.505 continues former Section 6252(a) without substantive change.

19 In subdivision (j), the erroneous reference to “subdivisions (c) *and* (d) of Section 54952 that
20 appeared in former Section 6252(a) has been replaced with a reference to “subdivision (c) *or* (d)
21 of Section 54952.” (Emphasis added.) This is a technical correction.

22 See Section 7920.520 (“public agency”).

23 **Staff Note.** Existing Section 6252(a) contains what appears to be an erroneous cross-
24 reference. For discussion of this point, see the accompanying memorandum.

25 **§ 7920.510. “Member of the public”**

26 7920.510. As used in this division, “member of the public” means any person
27 other than a member, agent, officer, or employee of a federal, state, or local
28 agency who is acting within the scope of his or her membership, agency, office, or
29 employment.

30 **Comment.** Section 7920.510 continues former Section 6252(b) without substantive change.

31 See Sections 7920.505 (“local agency”), 7920.515 (“person”).

32 **§ 7920.515. “Person”**

33 7920.515. As used in this division, “person” includes any natural person,
34 corporation, partnership, limited liability company, firm, or association.

35 **Comment.** Section 7920.515 continues former Section 6252(c) without substantive change.

36 **§ 7920.520. “Public agency”**

37 7920.520. (a) As used in this division, “public agency” means any state or local
38 agency.

39 (b) As used in [Section 6254.18], “public agency” means an entity specified in
40 [Section 6254.18(b)(3)].

1 **Comment.** Subdivision (a) of Section 7920.520 continues former Section 6252(d) without
2 substantive change.

3 Subdivision (b) is new. It is intended to help persons locate the special definition of “public
4 agency” that applies to [Section 6254.18].

5 See Sections 7920.505 (“local agency”), 7020.535 (“state agency”).

6 **☞ Staff Notes.**

7 (1) Existing Section 6252(d) defines “public agency” for purposes of the entire CPRA. In
8 addition, existing Section 6254.18 contains the following special definition of “public agency:”

9 6254.18....

10 (b) For purposes of this section, the following terms have the following meanings:

11

12 (3) “Public agency” means all of the following:

13 (A) The State Department of Health Care Services.

14 (B) The Department of Consumer Affairs.

15 (C) The Department of Managed Health Care.

16 (D) The State Department of Public Health.

17 Most likely, this special definition of “public agency” should remain in close proximity to the
18 substantive material to which it applies (i.e., the substance of existing Section 6254.18). The staff
19 has acted on that assumption in drafting proposed Section 7920.520(b), which is a “signpost
20 provision,” designed to alert readers to the special definition of “public agency” and help them
21 find it.

22 Later in this study, the staff will prepare a draft of one or more provisions that would continue
23 the substance of existing Section 6254.18. The Commission will then be well-situated to evaluate
24 where to place Section 6254.18’s special definition: In close proximity to the substantive material
25 to which it applies, or in the chapter entitled “Definitions.” Unless the Commission otherwise
26 directs, the staff will bring the issue back for the Commission to consider at that time.

27 (2) The signpost provision (proposed Section 7920.520(b)) contains bracketed cross-references
28 to “Section 6254.18” and “Section 6254.18(b)(3).” If the Commission ultimately decides to
29 proceed with the signpost approach, the staff will replace the bracketed cross-references with
30 cross-references to the corresponding new (as-yet undrafted) provisions.

31 **§ 7920.525. “Public records”**

32 7920.525. (a) As used in this division, “public records” includes any writing
33 containing information relating to the conduct of the public’s business prepared,
34 owned, used, or retained by any state or local agency regardless of physical form
35 or characteristics.

36 (b) “Public records” in the custody of, or maintained by, the Governor’s office
37 means any writing prepared on or after January 6, 1975.

38 **Comment.** Section 7920.525 continues former Section 6252 (e) without substantive change.

39 See Sections 7920.505 (“local agency”), 7920.535 (“state agency”), 7920.540 (“writing”).

40 **§ 7920.530. “Public safety official”**

41 7920.530. As used in this division, “public safety official” means the following
42 parties, whether active or retired:

43 (a) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal
44 Code, or a person who is not a peace officer, but may exercise the powers of arrest

1 during the course and within the scope of their employment pursuant to Section
2 830.7 of the Penal Code.

3 (b) A public officer or other person listed in Section 1808.2 or 1808.6 of the
4 Vehicle Code.

5 (c) An “elected or appointed official” as defined in [subdivision (f) of Section
6 6254.21].

7 (d) An attorney employed by the Department of Justice, the State Public
8 Defender, or a county office of the district attorney or public defender, the United
9 States Attorney, or the Federal Public Defender.

10 (e) A city attorney and an attorney who represent cities in criminal matters.

11 (f) An employee of the Department of Corrections and Rehabilitation who
12 supervises inmates or is required to have a prisoner in his or her care or custody.

13 (g) A sworn or nonsworn employee who supervises inmates in a city police
14 department, a county sheriff’s office, the Department of the California Highway
15 Patrol, federal, state, or a local detention facility, or a local juvenile hall, camp,
16 ranch, or home, and a probation officer as defined in Section 830.5 of the Penal
17 Code.

18 (h) A federal prosecutor, a federal criminal investigator, and a National Park
19 Service Ranger working in California.

20 (i) The surviving spouse or child of a peace officer defined in Section 830 of the
21 Penal Code, if the peace officer died in the line of duty.

22 (j) State and federal judges and court commissioners.

23 (k) An employee of the Attorney General, a district attorney, or a public
24 defender who submits verification from the Attorney General, district attorney, or
25 public defender that the employee represents the Attorney General, district
26 attorney, or public defender in matters that routinely place that employee in
27 personal contact with persons under investigation for, charged with, or convicted
28 of, committing criminal acts.

29 (l) A nonsworn employee of the Department of Justice or a police department or
30 sheriff’s office that, in the course of employment, is responsible for collecting,
31 documenting, and preserving physical evidence at crime scenes, testifying in court
32 as an expert witness, and other technical duties, and a nonsworn employee that, in
33 the course of employment, performs a variety of standardized and advanced
34 laboratory procedures in the examination of physical crime evidence, determines
35 their results, and provides expert testimony in court.

36 **Comment.** Section 7920.530 continues former Section 6254.24 without substantive change.

37 In subdivision (b), the erroneous reference to “Sections 1808.2 *and* 1808.6 of the Vehicle
38 Code” that appeared in former Section 6254.24(b) has been replaced with a reference to “Section
39 1808.2 *or* 1808.6 of the Vehicle Code.” (Emphasis added.) This is a technical correction.

40 In subdivision (g), the erroneous phrase “*and* a local juvenile hall, camp, ranch, or home” that
41 appeared in former Section 6254.24(g) has been replaced with the phrase “*or* a local juvenile hall,
42 camp, ranch, or home.” (Emphasis added.) This is a technical correction.

43 See Section 7920.515 (“person”).

1 **☞ Staff Notes.**

2 (1) Existing Section 6254.24(b) contains what appears to be an erroneous cross-reference. For
3 discussion of this point, see the accompanying memorandum.

4 (2) Proposed Section 7920.530(c) contains a bracketed cross-reference to “subdivision (f) of
5 Section 6254.21.” The staff has not yet drafted a provision that would continue the substance of
6 Section 6254.21(f). After we do so, we will replace the bracketed cross-reference with a cross-
7 reference to the corresponding new provision.

8 (3) Existing Section 6254.24(g) appears to contain an error. For discussion of this point, see the
9 accompanying memorandum.

10 **§ 7920.535. “State agency”**

11 7920.535. (a) As used in this division, “state agency” means every state office,
12 officer, department, division, bureau, board, and commission or other state body or
13 agency, except those agencies provided for in Article IV (except Section 20
14 thereof) or Article VI of the California Constitution.

15 (b) Notwithstanding subdivision (a) or any other law, “state agency” also means
16 the State Bar of California, as described in Section 6001 of the Business and
17 Professions Code.

18 **Comment.** Section 7920.535 continues former Section 6252(f) without substantive change.

19 **☞ Staff Note.** Existing Section 6252(f) refers to “the State Bar of California, as described in
20 Section 6001 of the Business and Professions Code.” Proposed Section 7920.535(b) would
21 include the same phrase, but legislation to reorganize the State Bar is pending (see SB 36
22 (Jackson)). Depending on the fate and content of that legislation, it may be necessary to make
23 adjustments in proposed Section 7920.535(b).

24 **§ 7920.540. “Writing”**

25 7920.540. As used in this division, “writing” means any handwriting,
26 typewriting, printing, photostating, photographing, photocopying, transmitting by
27 electronic mail or facsimile, and every other means of recording upon any tangible
28 thing any form of communication or representation, including letters, words,
29 pictures, sounds, or symbols, or combinations thereof, and any record thereby
30 created, regardless of the manner in which the record has been stored.

31 **Comment.** Section 7920.540 continues former Section 6252(g) without substantive change.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition of provisions in the California Public Records Act (Gov’t Code §§ 6250-6276.48), as the law existed on January 1, 2017. Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Corresponding New Provision
6251	7920.000
6252(a)	7920.505
6252(b)	7920.510
6252(c)	7920.515
6252(d)	7920.520
6252(e)	7920.525
6252(f)	7920.535
6252(g)	7920.540
6254.24	7920.530
6260	7920.200

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in the proposed CPRA Recodification Act of 2019. Unless otherwise indicated, all statutory references are to the Government Code.

Proposed New Provision	Corresponding Existing Provision
7920.000	6251
7920.005	new
7920.100	new
7920.105	new
7920.110	new
7920.115	new
7920.120	new
7920.200	6260
7920.500	new
7920.505	6252(a)
7920.510	6252(b)
7920.515	6252(c)
7920.520(a)	6252(d)
7920.520(b)	new
7920.525	6252(e)
7920.530	6254.24

DERIVATION OF NEW LAW (*cont'd*)

Proposed New Provision	Corresponding Existing Provision
7920.535	6252(f)
7920.540	6252(g)
